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No. 345

In the Supreme Court of the United States

OCTOBER TERM, 1957

SWORD LINE, INC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The Court of Claims entered its judgment without opinion. Its order stated that "on the authority of *Sword Line, Inc.* v. *United States*, 351 U. S. 976, * * * defendant's motion to dismiss be and the same is granted and plaintiff's petition is dismissed" (R. 81).

JURISDICTION

The judgment of the Court of Claims was entered on May 17, 1957. The petition for a writ of certiorari was filed on August 6, 1957. The jurisdiction of this Court can be invoked only under 28 U. S. C. 1255 (1).

QUESTION PRESENTED

Whether the Court of Claims properly dismissed petitioner's action below on the authority of this Court's decision in *Sword Line, Inc.* v. *United States*, 351 U. S. 976.

STATEMENT

This is the second time petitioner has requested this Court to review the jurisdictional issue presented by this case. See No. 861, October Term, 1955, certiorari granted and admiralty jurisdiction affirmed, 351 U. S. 976.

Petitioner originally filed a libel in the District Court for the Southern District of New York under the Suits in Admiralty Act, 46 U. S. C. 741–752, alleging that it chartered from the United States certain war-built vessels under the Merchant Ship Sales Act of 1946, and the Merchant Marine Act of 1936, and that it was overcharged because the charter hire had been computed in violation of statutory directions. The United States raised two points in answer to the libel—first, that the libel had been filed more than two years after the cause of action arose and was thus time-barred, and second, that it was also barred by a release and compromise with the Government pursuant to an arrangement under the Bankruptcy Act, 11 U. S. C. 701, *et seq.* The District Court ruled that this arrangement constituted a bar to the libel and dismissed it. *Sword Line, Inc.* v. *United States*, 134 F. Supp. 631 (S. D. N. Y.).

On appeal, the Court of Appeals for the Second Circuit affirmed, ruling that the District Court had

jurisdiction in admiralty over the controversy, that the claim was time-barred, and that it was also barred by the release and compromise with the Government. *Sword Line, Inc.* v. *United States*, 228 F. 2d 344 (C. A. 2). Petitioner, which had originally invoked admiralty jurisdiction, then moved for rehearing on the precise contention raised in this petition, namely, that admiralty lacked jurisdiction over the subject matter of its claim. On rehearing, the Court of Appeals, directing itself primarily to the jurisdictional issue posed, affirmed its earlier decision that the District Court had jurisdiction over the subject matter of the libel and that the libel was barred both by the statute of limitations and the release and compromise. *Sword Line, Inc.* v. *United States*, 230 F. 2d 75 (C. A. 2).

Thereafter, petitioner filed with this Court a petition for writ of certiorari to the Court of Appeals for the Second Circuit. This Court, on June 11, 1956, granted the petition and disposed of the controversy with the following *per curiam* decision (351 U. S. 976):

> Certiorari is granted, limited to the question whether admiralty had jurisdiction over the controversy stated in the libel, and the judgment is affirmed. The libel, though dependent on a statute, alleges unjust enrichment from a maritime contract. *Archawski* v. *Hanioti*, 350 U. S. 532. Affirmed.

Prior to this June 11 decision of this Court, petitioner on January 9, 1956, brought suit in the Court of Claims asserting a cause of action identical with

that set forth in the libel in the District Court (R. 1–11). The Government moved to dismiss (R. 13), and on the authority of this Court's decision in *Sword Line, Inc.* v. *United States*, 351 U. S. 976, the Court of Claims granted the Government's motion on May 17, 1957.

ARGUMENT

1. This petition for certiorari represents no more than an attempt to obtain reconsideration of a controversy heretofore correctly and conclusively determined by this Court against petitioner. The decision in *Sword Line, Inc.* v. *United States*, 351 U. S. 976, holding that admiralty has jurisdiction over an action seeking recovery on an alleged overpayment of charter hire, merely constitutes the reaffirmance of the rule of *Krauss Bros. Lumber Co.* v. *Dimon S. S. Corp.*, 290 U. S. 117, which held that a claim to recover excessive freight charges gives rise to a maritime lien and is enforceable in admiralty.[1] Similarly, the rule that the remedy provided by the Suits in Admiralty Act is exclusive has been firmly established by this Court. *Johnson* v. *Fleet Corporation*, 280 U. S. 320, 327; *Matson Navigation Co.* v. *United States*, 284 U. S. 352, 356; and see *Calmar S. S. Corp.* v. *United States*, 345 U. S. 446. Subsequent to its *Sword Line* decision, this Court has denied several petitions for certiorari presenting the same question. *American Eastern Corp.* v. *United States*, 231 F. 2d 664 (C. A. 2), certiorari denied, 351 U. S. 983; *Smith-*

[1] See also *Archawski* v. *Hanioti*, 350 U. S. 532, the direct authority relied on by this Court in the *Sword Line* decision.

Johnson Steamship Corp. v. *United States,* 142 F. Supp. 367 (C. Cls.), certiorari denied, 352 U. S. 895; *Marine Transport Lines, Inc., et al.* v. *United States,* 146 F. Supp. 222 (C. Cls.), certiorari denied, 352 U. S. 935.

2. Moreover, the decision in *Sword Line, Inc.* v. *United States,* 351 U. S. 976, involving the same parties, the same claim, and the identical jurisdictional question, is clearly *res judicata*. *Stoll* v. *Gottlieb,* 305 U. S. 165; *Chicot County Drainage District* v. *Baxter State Bank,* 308 U. S. 371; see also *Commissioner* v. *Sunnen,* 333 U. S. 591; *Heiser* v. *Woodruff,* 327 U. S. 726; *Sherrer* v. *Sherrer,* 334 U. S. 343; *Partmar Corp.* v. *Paramount Corp.,* 347 U. S. 89. In asserting that the earlier decision of this Court was void and invalid because there was no original admiralty jurisdiction of the subject matter, petitioner ignores the fact that the District Court had not only the power but also the duty to interpret the language of the jurisdictional statute, here the Suits in Admiralty Act, and its application to an issue before the court. *Stoll* v. *Gottlieb,* 305 U. S. 165, 171. And where a federal court, either the appellate court or the court of the first instance if no appeal is taken, has decided the question of jurisdiction over the parties or subject matter as a contested issue, its judgment is *res judicata* and permits no further inquiry into the jurisdictional question. *Stoll* v. *Gottlieb, supra,* at 172. Even if the court errs in entertaining jurisdiction, its determination of the question is conclusive upon the parties before it and not subject to collateral attack.

Stoll v. *Gottlieb*, *supra*, at 175; *Dowell* v. *Applegate*, 152 U. S. 327.

Petitioner has had its day in court on the question of jurisdiction over the subject matter of its claim, and the Court of Claims properly dismissed the complaint on the authority of the final decision rendered by this Court on petitioner's previous petition for certiorari.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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